

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

IN

1. S.B. Civil Second Appeal No.97/1987

Firm Bhajan Ram Gujarmal Bajaj, A registered
Partnership Firm through Partners
Shyam Lal & Others
...plaintiff-appellants

Versus

Gopal Das S/o Shri Nand Kishore & Another
...defendants-respondents

2. S.B. Civil Second Appeal No.111/1987

Gopaldas S/o Nand Kishore
...defendant-appellant

Versus

Firm Bhajanram Gujarmal Bajaj through
Ram Vilas S/o Chiranjil Lal & Another
AND Ram Kalyan S/o Gujarmal
...plaintiff-respondents

AND

Amar Singh S/o Gopaldas
...defendant-respondent

Date of Judgment ::: 24th July, 2007

PRESENT

HON'BLE MR. JUSTICE N.K. JAIN

Presence in Appeal No.97/1987

Shri J.P. Goyal with
Shri Amit Sharma, Counsel for appellants
Shri Rajneesh Gupta and
Shri Vikram Singh, Advocates, for respondents

Presence in Appeal No.111/1987

Shri Rajneesh Gupta and
Shri Vikram Singh, Advocates, for
Shri S.K. Gupta, Counsel for appellant

Shri J.P. Goyal with
Shri Amit Sharma, Counsel for respondents
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By the Court:-

These two second appeals under Section 100 of the Code of Civil Procedure, on behalf of plaintiff as well as defendants, are directed against common judgment dated 16th April, 1987, passed by the Additional District & Sessions Judge, Karauli, in Civil Appeal No.19/1985, therefore, both the appeals are being disposed of by this common judgment.

Plaintiff Firm Bhajanram Gujarmal Bajaj through its Partners filed a suit for recovery of a sum of Rs.8,403.50p. against defendants Gopaldas and Amarsingh in the lower court, which was contested by the defendants by filing a written-statement. The trial court framed nine issues. Both the parties led oral and documentary evidence and thereafter the trial court, vide its judgment dated 19th May, 1980, decreed the suit of the plaintiff for a sum of Rs.8,403.50p. with costs and directed the defendants to pay the decretal amount in 12 installments as per the details given in the decree. Being aggrieved with the same, the defendants preferred an appeal and the plaintiff filed cross-objection. The first appellate court, vide impugned judgment dated 16th April, 1987, dismissed the appeal as well as cross-objections, both, and upheld the judgment of the trial court. Being aggrieved with the same, the plaintiff preferred S.B. Civil Second Appeal No.97/1987 challenging the finding in respect of Issue No.3 relating to interest on decretal amount, whereas

defendants preferred S.B. Civil Second Appeal No.111/1987 challenging the finding of the courts below on other Issues.

While admitting S.B. Civil Second Appeal No.97/1987, this court formulated the following substantial questions of law on 4.1.1988:-

- “(i) Whether both the courts below were justified in refusing to award the interest on the decretal amount where the suit of the appellant was decreed without assigning any reason or sufficient reasons for the refusal of the interest pendente-lite and future?
- (ii) Whether in a suit for recovery of money, the plaintiff is entitled for the interest pendente lite and future and in case the suit is decreed, could the courts below have refused the award of interest on the decretal amount?
- (iii) Whether a decree for interest pendente lite and future could be refused without assigning any reasons for its refusal even in a case where the interest has been admitted and found proved to be payable to the decree-holder?
- (iv) Whether the appellants could have taken the objections for agitating and contesting issue No.7 without filing any cross objection before the first appellate court and the same in absence of any cross objections could be refused by the first appellate court?”

This Court, while admitting S.B. Civil Second

Appeal No.111/1987, formulated the following substantial questions of law on 5th October, 1987:-

- "1. Whether appellant Gopaldas can be held responsible for the alleged debts said to be outstanding against another firm Ram Singh Amar Singh?
2. Whether the admitted amount of Rs.5,000/- paid to the defendants after the plaintiffs started transactions with the defendants can be adjusted, against the interest of defendant, against any amount alleged to be due from the firm Ram Singh Amar Singh?
3. Whether an adverse inference should not be drawn against the plaintiffs as they withheld the important and material witness Ram Kalyan?

The learned counsel for both the parties, on their turn, while opposing the second appeal of each other, contended that the questions of law formulated in the second appeals at the time of admission do not involve and in fact no substantial question of law is involved in these second appeals so as to consider the same within the scope of Section 100 of the Code of Civil Procedure and in view of the fact that no substantial question of law is involved, therefore appeals be dismissed.

As per sub-section (5) of Section 100 of the CPC, the second appeal has to be heard on question so formulated but a liberty has been given to respondent that at the time of hearing of appeal he will be allowed to argue that case does not involve such question.

Although, the substantial questions of law were formulated in these second appeals, but, in view of the provisions of sub-section (5) of Section 100 of the CPC, the respondent is at liberty to argue that question of law so formulated at the time of admission of the appeal do not involve therein.

In the light of submissions made on behalf of both the learned counsel, I examined the matter and I find that both the appeals have arisen out of a suit for recovery filed by the plaintiff for a sum of Rs.8,403.50p., which has been decreed by both the courts below without any interest thereon and, after considering the submissions of learned counsel for both the parties, I find that all the issues framed in the present cases are relating to question of fact and both the courts below have recorded a concurrent finding of fact in respect of all the issues which cannot be interfered with by this Court in second appeal under Section 100, CPC, therefore, I find force in the submissions of learned counsel for both the parties that no substantial questions of law is involved in both the appeals and both the appeals are liable to be dismissed.

Consequently, both the appeals are dismissed with no order as to costs.

A copy of this judgment may be placed in the file of connected appeal i.e. S.B. Civil Second Appeal No.111/1987.

(N.K. Jain) J.

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